

Senior Managers' Meeting

December 10, 2013,

(finalized 3/24/14)

Region 10 Office, Seattle, WA

Present for EPA: Lori Cohen and Deb Yamamoto

Present for the LWG: Tom Imeson, Jack Isselman, Margaret Kirkpatrick and, by telephone, Dean Marriott and Doug Loutzenhiser

I. RI Process and Schedule

- The group discussed the latest schedule from the Region to the LWG, dated November 19, which shows completion of the RI in July, 2014, assuming no disputes or further delays.
- The LWG noted that: (1) the completion date in the original (November 2012) schedule was July, 2013, and (2) the section-by-section EPA revisions were going much more slowly than expected, due in part to the extent of EPA's reorganization and revisions.
- The LWG further noted its difficulty in finalizing sections of the RI where EPA has removed language the LWG thinks is important, but left open the possibility that the language will be restored in a future section. The LWG does not want to elevate or dispute the language removal if it will be included later but the agreed-upon process requires either elevation or loss of the opportunity to raise the issue. The LWG proposed two possible approaches:
 - For EPA to finalize all of the remaining RI sections, give them to the LWG together, and give the LWG a total of 30 days per section, to review and raise issues; or
 - For EPA and the LWG to put issues that may be resolved later into a temporary "parking lot." If issues in the parking lot are not resolved by the end of the section-by-section process, the LWG may elevate and dispute them then.
- EPA expressed a strong preference for the second approach based on its belief that the section-by-section review has resolved many issues along the way.
- **RESOLUTION:** LWG Senior Managers will discuss with others in the LWG and let EPA know whether the "parking lot" approach is acceptable. If so, EPA will either modify the September process letter or add an addendum.
FOLLOW UP: The LWG Senior Managers discussed the "parking lot" approach with others in the LWG. Lori Cohen will either modify the September process letter or add an addendum that states substantially as follows: "The EPA and LWG

staff will agree on a list of “parking lot” sections that will be reviewed and can become a part of the final formal dispute process if noted on the “parking lot” list. This parking lot list will only include those issues where EPA notes that a section will be taken out and revised to become part of a later section of the document; the LWG can then review how EPA has presented or integrated the information into the later section. If EPA and the LWG are not able to agree upon how the information should be presented or evaluated in the later section, the LWG may elevate its concern to senior management during the review and comment resolution period for the later section.”

II. RI Changes relative to background levels

- At its August 28 meeting and in subsequent telephone conversations with Lori Cohen, the LWG Senior Managers expressed concern that EPA is taking an approach to the calculation of background levels of contaminants that is different from the approach EPA directed the LWG to take in its 2008 comments on the RI, and that EPA confirmed as “consistent with guidance” in 2010. According to the 2008/2010 approach, the draft RI could include two background calculations for PCB concentrations, one preferred by the LWG (“the LWG Approach”) and a second one, directed by EPA, that excluded certain “outlier” samples included in the LWG’s preferred approach (the “Original EPA Approach”). Apart from the difference in the outliers included, the two approaches were identical.
- In its revisions to Section 7 of the RI, EPA replaced both the LWG Approach and the Original EPA Approach to identification of outliers with a new approach (the “New EPA Approach”) that produced lower background levels for some contaminants. The LWG objected to the New EPA Approach on both technical and policy grounds, and advised EPA that it would elevate this issue if it could not be resolved at the PM level. After considerable discussion, the EPA and LWG project managers agreed that the RI Section 7 would include four sets of background calculations, including two with the full data set and two with outliers removed. The LWG noted that this resolution is acceptable from a technical perspective but that an important policy issue remains: The LWG does not believe EPA should make significant substantive changes to the RI now, which depart from prior EPA direction or prior EPA/LWG resolution of issues, unless a subsequent change in law or agency Guidance dictates the change. The LWG further noted that EPA has not identified a change in law or Guidance to support its departure from the Original EPA Approach and that the LWG has not accepted the background-based PRGs EPA presented in September.
- **RESOLUTION:** EPA will investigate this matter further and report back to the LWG.

- **FOLLOW UP:** Lori Cohen met with her technical team. She concluded that relative to background calculations and the identification of outliers, EPA had not changed its approach except with regard to how outliers in the upriver reference area are identified/removed from the background calculations. On this matter, although there has not been a change in relevant law or Guidance, EPA is correct to depart from the Original EPA Approach because it was based on an incorrect interpretation of Guidance. Relevant correspondence is attached (December 12, 2013 emails between Kristine Koch and Jim McKenna; January 16, 2014 email from Lori Cohen to Margaret Kirkpatrick).

III. FS Process

- EPA proposed that the LWG and EPA take a collaborative and interactive approach to revising the FS. Unlike the RI process, EPA will not do section-by-section revisions shown as redlines and strikeouts to the LWG text. Instead, EPA will discuss its intended changes to particular sections of the FS with the LWG and then rewrite those sections. EPA noted that certain of its changes will be so fundamental that the redline/strikeout approach is impractical. EPA examples included the comparative analysis of alternatives and the elimination of site-wide averages.
- The LWG agreed that a collaborative, interactive approach is desirable but noted that Dan Opalski's decision in the BHHRA dispute is inconsistent with informal, back-and-forth communications. According to the Opalski decision, every EPA comment is directive so the LWG must either dispute it within 14 days or comply with it.
- **RESOLUTION:** EPA will draft a proposed process for the FS, similar in some ways to the RI process but adapted to account for differences between the RI and FS. EPA and the LWG will work together to finalize the process.

IV. Overall Schedule

- EPA confirmed that it intends to complete both the RI and FS in 2014, and to produce a Proposed Plan in early 2015. EPA acknowledged that this is an ambitious schedule but noted that there will be more contractor support for the FS than there has been for the risk assessments and the RI.
- EPA said it will produce Region X's conceptual approach to a remedy in the late spring or early summer of 2014, and that EPA will make that document available to the LWG, the State of Oregon, and its partners (Tribes and Trustee agencies).
- EPA plans to take the conceptual approach to the Remedy Review Board and CSTAG, jointly, in the summer.

- The LWG will have an opportunity to provide written comments on the conceptual approach but will not be invited to the Remedy Review Board/CSTAG presentation. Oregon DEQ and EPA's partners will be invited to attend.
- EPA noted that this involves the Remedy Review Board and the CSTAG in the process much earlier than usual.
- EPA and the LWG noted that the conceptual approach document will be a public record and that even the limited distribution EPA has in mind creates the strong possibility that the conceptual approach will receive significant attention. EPA requested the LWG's assistant in framing public communication about this step in the process. EPA and the LWG discussed how they might work together to ensure appropriate communication about the conceptual approach and minimize polarizing stakeholder reaction.

V. EPA Decision Hierarchy

- The LWG asked for clarification of the EPA Project Managers' roles and relative authorities. The LWG said it had thought that Kristine was the lead on the BHHRA and the RI, that Chip was lead on the BERA and FS, that they were both at the same level and that they both reported up to Deb and then to Lori Cohen. Recently, however, Kristine has appeared to be the final authority on the contents of the BERA (because she provided the last set of comments and appeared to have the final say on the BERA's approach to risk management recommendations) as well as the BHHRA and the RI.
- EPA responded that Chip and Kristine are a "tag team" on the various documents; that Chip, Kristine and Sean Sheldrake are all PMs at the same level; and that none of them have the authority to override decisions made by the others. EPA confirmed that all three report to Deb, who reports to Lori.
- EPA said Kristine will be working on the FS with Chip, in part because of her technical expertise and in part because of Chip's eligibility for retirement.

VI. Delegation update

- EPA described the briefing Region X and Headquarters recently provided the Oregon Delegation's staff:
 - Jim Woolford will attend all Senior Executive/Region X meetings;
 - Headquarters staff will be involved in development of the remedy before the Remedy Review Board/CSTAG process;
 - Headquarters will review the Proposed Plan before it becomes public;
 - Headquarters will make additional resources available to the Region.

VII. Senior Executives Meeting

- EPA and the LWG discussed the agenda for the January 7 Senior Executives meeting, which will be attended by Jim Woolford, Dennis McLerran, Rick Albright and Lori Cohen. In very general terms, EPA proposed the following:
 - Welcome and Introductions
 - Purpose of the Executives Meeting: Not to resolve technical issues, but to discuss how to move the process forward to the selection of an implementable remedy
 - Schedule
 - Headquarters' and the Region's respective roles
 - Public outreach and education
 - Agreements and Next Steps
- EPA and the LWG discussed the merits of having one or two more Senior Executives' meetings before the production of EPA's conceptual approach